

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Advanced Methods to Target and Eliminate) CG Docket No. 17-59
Unlawful Robocalls)
)

**COMMENTS OF
THE USTELECOM ASSOCIATION**

The USTelecom Association (USTelecom)¹ submits these comments in response to the Public Notice (Notice) released by the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) in the above-referenced proceeding.² Through its Notice, the Bureau seeks to refresh the record on how the Commission might further empower voice service providers to block illegal calls before they reach American consumers. In its proceeding, the Bureau seeks to refresh the record in response to the Commission’s Call Blocking NPRM and NOI released last year.³ In particular, the Bureau seeks comment on additional criteria voice providers could use to identify and block illegal calls beyond the categories identified in the Commission’s 2017 blocking order (*2017 Call Blocking Order*).⁴

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Public Notice, *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Advanced Methods to Target and Eliminate Unlawful Robocalls*, DA 18-842 (released August 10, 2018) (*Notice*).

³ *Id.*, p. 1.

⁴ See, Notice of Proposed Rulemaking and Notice of Inquiry, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 32 FCC Rcd 2306 (2017) (*Call Blocking NPRM and NOI*); see also, Report and Order and Further Notice of Proposed Rulemaking, *Advanced Methods to*

USTelecom supports efforts by the Commission to expand the ability of voice providers to voluntarily block, label, or otherwise mitigate illegal robocalls to consumers.

I. A Variety of Analytical Methods Could be Used to Identify Illegal Calls.

In its *2017 Call Blocking Order*, the Commission adopted rules expressly authorizing providers to block four clearly defined categories of calls highly likely to be illegal.⁵ The Bureau now seeks comment on whether to expand the authority of voice providers to voluntarily block calls beyond those four categories. USTelecom generally supports expanding the authority of voice providers to voluntarily block, label, or otherwise mitigate illegal robocalls. As with any robocall mitigation technique deployed by voice providers, the Commission should exercise a certain degree of caution in granting such authority. USTelecom encourages the Commission to consider the following factors in formulating its decision.

First, if voice providers' authority to block suspected illegal calls is expanded, the Commission should make such authority permissive as done in the *2017 Call Blocking Order*.⁶ As previously noted by USTelecom, voice providers have varying degrees of capabilities with respect to analyzing and scoring suspected illegal robocalls. Given that some voice providers may have limited capabilities to conduct the necessary heuristics to identify illegal robocalls, mandates in this area would be unwise.

Target and Eliminate Unlawful Robocalls, 32 FCC Rcd 9706, 9727 (2017) (*2017 Call Blocking Order*).

⁵ *2017 Call Blocking Order*, ¶ 1 (adopting rules allowing providers to block calls from phone numbers on a Do-Not-Originate (DNO) list and those that purport to be from invalid, unallocated, or unused numbers).

⁶ *Id.*, ¶ 9 (stating that the Commission gives voice service providers “the option of blocking illegal robocalls in certain, well-defined circumstances.”).

The Commission’s reasoning in its *2017 Call Blocking Order* is particularly relevant here. There, the Commission deemed that granting such authority to voice providers would remove “regulatory roadblocks” while providing industry stakeholders with greater flexibility in blocking illegal calls.⁷ At the same time, USTelecom agrees that such flexibility better ensures that any such effort, “helps, rather than harms, consumers.”⁸

Second, while criteria may exist for identifying particular calls that are illegal or warrant additional scrutiny, the Commission should avoid codifying any particular measures for voice providers. Just as there are a diversity of tools available to consumers to mitigate illegal or unwanted robocalls,⁹ there is similar diversity in identifying such calls. For example, AT&T has identified a range of criteria that it uses to identify suspect illegal robocalls, including sequential dialing patterns, low average call duration, and large bursts of calls in a small time window.¹⁰ First Orion collects and analyzes “billions of disparate data points,” and then distills that information into refined data that leads to real time scores that are updated every 6 minutes.¹¹

Moreover, differences exist between the analytics used by third party providers (*e.g.*, First Orion) as compared to those used by voice providers (*e.g.*, AT&T). For example, while third-party providers may rely more heavily certain data points (*e.g.*, honeypots), a facilities-based provider may rely more heavily on others (*e.g.*, analysis of call patterns across its

⁷ *Id.*

⁸ *Id.*

⁹ *See e.g.*, Comments of the USTelecom Association, CG Docket No. 17-59, pp. 2 – 4 (submitted July 20, 2018).

¹⁰ *See*, Ex Parte Notice, AT&T, CG Docket No. 17-59, p. 4 (submitted March 6, 2018) (*AT&T Ex Parte*).

¹¹ *See*, Ex Parte Notice, First Orion Corp., CG Docket No. 17-59, p. 4 (submitted Sept. 24, 2018) (*First Orion Ex Parte*).

network). Neither approach is incorrect and each has unique value in determining the potential illegality of a call.

Such diversity in analytical approaches is a significant strength in the ongoing battle against illegal robocalls. Because of this diversity, illegal robocallers must adapt to a multitude of approaches rather than a single baseline standard. Establishing a standard set of criteria or best practices could hinder this strength. Given the highly adaptive and ever-changing activities of illegal robocallers, establishing a single standard or benchmark could potentially thwart the ability of third parties and voice providers to implement effective countermeasures.

II. Various Approaches Could be Implemented to Prevent Illegal Robocalls from Reaching Consumers, but the Commission Should Adopt a Safe Harbor.

The Commission should adopt a safe harbor to provide certainty to voice providers that choose to institute blocking measures consistent with the rules adopted in this proceeding.¹² USTelecom agrees that voice providers instituting reasonable forms of blocking should not be deemed in violation of the Commission’s rules and the Communications Act. The Commission should also focus particular attention on the potential impacts that collective call blocking efforts may have with respect to the agency’s call completion rules. USTelecom supports implementation of a safe harbor consistent with the one proposed by AT&T.¹³

The Notice also places an emphasis on the “blocking” of illegal robocalls by voice providers.¹⁴ USTelecom encourages the Commission to acknowledge the value of additional approaches to mitigating illegal robocalls, such as labelling and know your customer. The

¹² *Call Blocking NPRM and NOI*, ¶¶ 34 – 36.

¹³ *AT&T Ex Parte*, p. 1.

¹⁴ *See e.g., Notice*, n. 1 (stating that “our focus here is voice service provider *blocking* of illegal calls.”) (emphasis added).

Commission has previously acknowledged that no single, silver bullet exists for addressing the robocall issue, and for that reason, measures outside of blocking could play an important role in stemming the effect of illegal robocalls.

For example, the labelling of robocalls identified as presumptively illegal can be a highly effective consumer tool. Appropriate labelling of a call identified as potentially illegal (*e.g.*, changing the caller-ID to read “Scam Likely”), provides the consumer with the equivalent of an advanced warning that the call is suspect. Based on this warning, a consumer may choose to ignore or answer the call. In the case of the latter, the consumer will have a heightened level of awareness that should reduce their susceptibility to a scam. Such heightened awareness is particularly valuable with respect to scams that rely extensively on catching a consumer off guard, such as the grandparent scam.¹⁵

In addition to blocking and labelling, know your customer is an equally valuable and efficient approach for mitigating robocalls. In contrast to blocking robocalls at the termination end (*e.g.*, through a third party blocking service), know your customer focuses on stopping calls at their origination – a far more effective approach to reducing the number of illegal robocalls. While many responsible communications providers actively work to keep illegal traffic off of their networks, other providers are either disinterested in trying to resolve the robocall problem, or even look the other way when accepting traffic they know or should know is illegal. Properly instituted, know your customer encourages voice providers to more proactively institute measures that keep illegal traffic off of communications networks.

¹⁵ The Federal Trade Commission notes that the so-called “Grandparent Scam” will “play on our emotions” for consumers targeted by such scams. *See*, FTC website, *Family Emergency Scams* (available at: <https://www.consumer.ftc.gov/articles/0204-family-emergency-scams>) (visited Sept. 24, 2018).

Under a know your customer approach, voice providers can implement a variety of internal measures to monitor the voice traffic transiting their networks to ensure it is consistent with legitimate voice traffic. Given the wide range of tools and methods for analyzing voice traffic, different voice providers may have different and valid techniques for achieving the same results. The Commission should encourage the adoption of such methods by voice providers.

The value of a know your customer approach for addressing illegal robocalls is best illustrated in the recent Senate testimony of notorious robocaller Adrian Abromovich.¹⁶ During his testimony, Abramovich stated that the “biggest issue to stop robocalls is the availability of carriers to accommodate these types of calls.”¹⁷ He discusses the limited universe of voice providers that advertise services for “short duration” calls, and notes that many such providers will “blend” this illegal dialer traffic with legitimate traffic. He says these providers and practices are “fueling” the robocall epidemic, and says it would be a “good idea” to focus on the “five or six” providers offering these services, and facilitating these calls.¹⁸ A know your customer approach to robocalls addresses head-on the very issues raised by Mr. Abramovich in his testimony.

III. Industry Traceback Efforts are Crucial to Combatting the Scourge of Illegal Robocalls.

An equally important tool for reducing illegal robocalls is a robust traceback process with vigorous and consistent enforcement action. Since 2016, USTelecom has led the 24 member

¹⁶ U.S. Senate Committee On Commerce, Science, & Transportation website, *Abusive Robocalls and How We Can Stop Them*, Hearing Video, April 18, 2018 (available at: <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=E0EB17D2-A895-40B4-B385-F94EA2716957>) (visited Sept. 24, 2018).

¹⁷ *Id.*, Video Time Mark 0:53:26 – 0:53:36.

¹⁸ *Id.*, Video Time Mark 1:03:00 – 1:04:00.

Industry Traceback Group (Traceback Group) whose members are committed to identifying the source of illegal robocalls, and working with law enforcement to bring these illegal perpetrators to justice. The 2017 Strike Force Report contains a detailed overview of the Traceback Group, and its general structure and operations.¹⁹

There are currently twenty-five members of the ITB Group, which includes traditional wireline phone companies, wholesale carriers, wireless providers, and cable companies. The membership also includes foreign carriers (*e.g.*, Bell Canada), and non-traditional voice providers (*e.g.*, Google and YMax). A full listing of Traceback Group members is included in these comments as Attachment A.

Since late 2017, USTelecom has been making enforcement referrals to the Commission and the Federal Trade Commission (FTC). This cooperation between industry and government can help to administratively streamline the enforcement efforts of both the Commission and the FTC. Specifically, since the Communications Act permits voice providers to share customer proprietary network information (CPNI) in order to protect their customers and/or networks, the Traceback Group can quickly and efficiently identify the path of any given call.²⁰ This in turn, means that neither the Commission nor the FTC must go through the time-consuming process of issuing subpoenas to each and every provider in the call path – instead, they can focus such

¹⁹ See, Ex Parte Notice, from USTelecom, CTIA, ATIS, and ACT – The App Association, CG Docket No. 17-59, pp. 19 – 23 (submitted April 28, 2017) (available at: <https://ecfsapi.fcc.gov/file/10428413802365/Ex%20Parte-Strike-Force-Report-2017-04-28-FINAL.pdf>) (visited Sept. 24, 2018).

²⁰ Section 222(d)(2) of the Communications Act permits telecommunications carriers to share, disclose and/or permit access to, Customer Proprietary Network Information in order to “protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.” See, 47 U.S.C. § 222(d)(2).

efforts only on those upstream providers that have declined to cooperate with the efforts of the Traceback Group.

Unfortunately, there are far too many providers falling into that latter category. While numerous providers have formally joined our traceback efforts, and many others cooperate in good faith, too many upstream carriers refuse to cooperate. This not only prevents the Traceback Group from identifying the true origin of these malicious calling events, but it makes subsequent law enforcement investigations more time consuming. Given the crucial role of traceback in mitigating illegal robocalls, the Commission should strongly encourage voice providers to participate in traceback efforts.

All too often USTelecom has encountered voice providers that refuse to participate in active traceback efforts. In some instances, these intransigent carriers simply refuse to respond to USTelecom's request for upstream carrier information. In fact, in a recent traceback effort in which upstream providers were expressly advised that the incident involved an active denial of service attack against a public safety answering point that disrupted 911 services, several upstream providers simply ignored USTelecom's requests. In addition to being inexcusable, such behavior by voice providers is grossly irresponsible.

In other instances, carriers claim that they are prohibited from disclosing such information absent a subpoena. This despite the fact that USTelecom explains at length to each carrier that the Communications Act provides an exception for sharing CPNI. In one notable instance, an upstream provider "officially reject[ed]" USTelecom's request, while also stating that Section 222 of the Communications Act is "non-binding." The upstream provider then stated that unless USTelecom provided a subpoena from a local, state or Federal authority, we should "refrain from any further contact with our organization." Still others claim that non-

disclosure agreements with their customers prohibit the sharing of any CPNI. Of course, any voice provider truly committed to addressing illegal robocall traffic could simply amend its contracts to provide an exception for traceback.

The sharing of such information by telecommunications providers can benefit consumers by enabling providers to quickly, efficiently and cooperatively identify the true source of fraudulent, abusive or unlawful calls, including robocalls. In instances where calls are traced to their point of origin, this often enables investigating providers to work with the originating carrier to cease such calls initiated by its customer. Such efforts are also extremely valuable to law enforcement, since carriers' ability to trace calls through several networks can substantially assist law enforcement personnel in subsequent investigations.

In addition to interpreting Section 222(d)(2) to permit the sharing of CPNI, the Commission should also encourage such sharing between providers. The appropriate sharing of such information between larger numbers of telecommunications providers could positively impact unlawful robocall mitigation by making the identification of the true source of such calls more accurate and timely. The Commission's clarification on Section 222(d)(2) could also prove useful in encouraging reticent telecommunications providers to more willingly participate in the sharing of CPNI information during investigations into the source of unlawful robocall campaigns.

IV. A Broad Range of Industry Stakeholders are Working to Address Instances of False Positives.

USTelecom appreciates and supports the Commission's inquiry into the crucial issue of protecting legitimate callers who may have their calls blocked. The importance of protecting legitimate callers is taking on increased importance, particularly as call-blocking services and initiatives continue to increase penetration within the marketplace. Such scenarios could arise

in instances where voice providers block numbers directly, and for blocking services that consumers may opt into in order to block or filter potentially unwanted calls. It is an issue USTelecom and its members have been wrestling with for years

Fortunately, there is growing awareness of the issue and increasing cooperation on the part of a broad range of stakeholders to ensure that it is effectively and efficiently addressed. For example, USTelecom has hosted two workshops aimed at helping to develop “best practices” for creating and maintaining blacklists. In addition to representatives from the voice provider industry (including many USTelecom members), the workshops have included strong participation from the scoring and analytics industry, as well as the call originator industry.

USTelecom has also been working closely with the Professional Association for Customer Engagement (PACE) and its members on this issue. USTelecom and PACE are currently establishing working groups that will seek to develop best practices or approaches that are focused on reducing the potential for false positives. While each of these working groups will be focused on discrete aspects of the scoring/analytics issue, their collective efforts will be directed towards increasing coordination between the various stakeholders within the calling ecosystem.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By:  _____

Kevin G. Rupy

Its Attorneys
USTelecom Association
601 New Jersey Avenue, N.W.
Suite 600
Washington, D.C. 20001
(202) 326-7300

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Attachment A
USTelecom Industry Traceback Group Membership

Alliance
ANI Networks
AT&T
Bandwidth.com
Bell Canada
CenturyLink
Charter Communications
Cincinnati Bell
Comcast
Consolidated Communications
Cox Communications
Frontier
Google
IDT Telecom
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NovaTel
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